



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Consolidated Bell, Inc.

File: B-220425.2

Date: August 18, 1986

DIGEST

Protester may recover the costs it incurred in filing and pursuing its protest as well as its proposal preparation costs where the agency unreasonably excluded the protester from the competition and no other remedy is available.

DECISION

Consolidated Bell, Inc., has submitted a claim for proposal preparation costs and the costs of filing and pursuing its protest, including attorney's fees, as a consequence of a protest that we sustained in its favor in our decision in Consolidated Bell, Inc., B-220425, Mar. 11, 1986, 86-1 C.P.D. ¶ 238. The protest concerned request for proposals (RFP) No. KECS-85-025, issued by the General Services Administration (GSA) for IBM or equal personal computers and associated peripheral equipment.

In our decision, we held that GSA unreasonably found Bell's proposal unacceptable. We also held that GSA improperly awarded the contract on the basis of initial proposals because it was not clear that the award was at the lowest overall cost to the government--the record showed it probably would have cost less to contract with Bell. We sustained the protest and recommended that GSA terminate the contract and award a contract to Bell or enter into discussions under the RFP, and include Bell in those discussions.

GSA has informed our Office that the contract was terminated for the convenience of the government on April 30, 1986. The agency further advises, however, that the contract was funded with fiscal year 1985 funds, which GSA notes cannot be used to procure the equipment in 1986, and that because no fiscal year 1986 funds are available no award can be made under the protested solicitation. In response to this information, Bell has requested reimbursement for the costs it incurred in submitting its proposal and in pursuing its protest.

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Our Bid Protest Regulations, implementing the Competition in Contracting Act of 1984, provide that a protester may recover the reasonable costs of filing and pursuing a protest, including attorney's fees, where the agency unreasonably excluded the protester from the procurement except where our Office recommends that the contract be awarded to the protester and the firm receives the award. The protester may recover proposal preparation costs where it has been unreasonably excluded from the competition and no other remedy enumerated in our regulations is appropriate. 4 C.F.R. § 21.6(d), (e) (1986). Here, by failing to evaluate Bell's proposal properly and by failing to hold discussions, GSA, in effect, unreasonably excluded Bell from the competition. Since no other remedies are available, by separate letter we are advising the Administrator of GSA that Bell is entitled to recover reasonable protest and proposal preparation costs. Bell should submit its claims for these costs directly to the agency. 4 C.F.R. § 21.6(f).

Milton J. Fowler
for Comptroller General
of the United States